

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES W. BARTON,)
Petitioner,)
)
v.) Civil Action No. 03-40271-NMG
)
STEVEN J. O'BRIEN,)
Respondent.)
)

RESPONDENT'S MOTION TO DISMISS

Respondent, Steven J. O'Brien, moves that this petition for writ of habeas corpus be dismissed pursuant to 28 U.S.C. § 2254(b)(1)(A), because petitioner failed to exhaust the remedies available to him in the courts of Massachusetts before filing this petition.

For this reason, and for the reasons set forth in the accompanying Memorandum of Law in Support of Respondent's Motion to Dismiss, respondent respectfully requests that this petition be dismissed.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ David M. Lieber

David M. Lieber (BBO# 653841)
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200 ext.2827

Dated: January 28, 2004

ATTORNEYS FOR RESPONDENT